application of any of the parties thereto, be transferred by a Judge from one Court to another Court or may be retained in the Court in which the proceedings were commenced although it may not be the Court in which the proceedings ought to have been commenced."

This section gives the Court a wide discretion which should be exercised so as not to inflict any undue hardship on the debtor. Even if the proceedings were started in the wrong Court, a matter upon which I am by no means satisfied, I think it will be a convenience to the Official Assignee that they should be retained in Kuala Lumpur, and it will be no hardship to the debtor.

There was a further objection that the debtor was presenting an appeal to the Privy Council. It was, however, not disputed that he was out of time in presenting such appeal, and it is doubtful whether the Court of Appeal has power to extend the time, and in any case this did not appear to me to be sufficient ground for opposing the petition.

The objections, therefore, failed, and I made Receiving and Adjudication Orders.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C. J.

October 31, 1936.

JODH SINGH.....Assignee-Applicant

v.

A. A. G. DE ALWIS.....Assignor-Respondent.

[SELANGOR ORIGINATING SUMMONS No. 127 of 1936.]

The Bills of Sale Enactment (Cap. 57), section 6 (b)—In the form—Payment of interest after due date.

In a bill of sale dated the 6th April, 1932, and repayable on the 30th July, 1932, the material parts were as follows:—

"(1) The chattels are assigned

'by way of security for the payment of the sum of dollars two thousand three hundred and fifty ($2,350) and interest thereon at the rate of twenty-four (24) per cent. per annum.'

And the assignor agreed and declared

'that he will duly pay to the said assignee the principal sum aforesaid on the 30th day of July, 1932 and the interest thereon by monthly payments of $47 (say dollars forty seven) per mensem, and the first of such payments to be paid on the 1st day of May 1932.'"

The respondent contended that the bill of sale was not in the form as required by section 6 (b) of the Bills of Sale Enactment (Cap. 57) and that it did not provide for interest after due date.

Held, that the bill of sale set out correctly the effect of the transaction and therefore did not conflict with the provisions of the Bills of Sale Enactment.

Held further, that the bill of sale must be construed so as to give effect to the intention of the parties and from its terms it was clear that although the principal sum was due to be repaid on the 30th July, 1932, the interest then due need not be paid, and therefore it was intended that if the principal sum was not repaid on the 30th July, 1932, interest at the rate specified would continue to be payable.

Arumugam v. *Leonard*, (1936) F.M.S.L.R. 1; (1936) 5 M.L.J. 252 distinguished.

A. J. Bostock-Hill for the Assignee-Applicant.

V. Mackie and *M. N. Cumarasami* for the Assignor-Respondent.

Cur. Ad. Vult.

TERRELL, AG. C.J.—In this case the respondent was called upon to shew cause why the chattels comprised in a bill of sale should not be sold. The applicant is a transferee from the original assignee.

Two points were argued by the respondent:—

(a) that the bill of sale was not 'in the form' required by section 6 (b) of the Bills of Sale Enactment; and

(b) that the bill of sale did not provide for interest after due date.

As regards (a) the bill of sale states as the consideration that the sum of $2,350 was due by the respondent to one Sucha Singh, the original assignee under the bill of sale. It appears from the affidavits, and is not disputed that the chattels comprised in the bill of sale originally belonged to one Samy who charged them to Sucha Singh under another bill of sale. The respondent Alwis subsequently acquired the chattels from Samy, and in doing so took upon himself Samy's liability to Sucha Singh. To implement this transaction he gave Sucha Singh the bill of sale which is the subject of the present application. It appears to me that as a result of these arrangements Alwis became indebted to Sucha Singh in the sum named, and that the bill of sale contains no mis-statement. All that the law requires is that the effect of the transaction should be correctly stated—see *The Credit Co.* v. *Pott*, 6 Q.B.D. 295 and *Stott* v. *Shaw & Lee Ltd.* (1928) 2 K.B. 26, 31. The first ground of objection, therefore fails.

The second point argued by the respondent does not go to the root of the transaction, but merely affects the amount recoverable. The exact wording of the bill of sale, which is dated the 6th of April, 1932, is important. The document states:—

(1) that the chattels are assigned

"by way of security for the payment of the sum of dollars two thousand three hundred and fifty ($2,350) and interest thereon at the rate of twenty-four (24) per cent per annum."

And the assignor further agreed and declared

(2) "that he will duly pay to the said assignee the principal sum aforesaid on the 30th day of July, 1932, and the interest thereon by monthly payments of $47 (say dollars forty seven)

per mensem, and the first of such payments to be paid on the 1st day of May 1932."

Now, it was urged upon me that the recent Court of Appeal decision in *Arumugam* v. *Leonard*, (1936) F.M.S.L.R. 1 was conclusive on this point. The Seremban suit was in connection with charge over land for $10,000. In that case the charge was dated the 28th December 1928. The chargor undertook to pay the principal sum on the 28th March 1929 and to pay interest on the principal sum at the rate of 12 per cent per annum by equal payments of $100 on the 28th of every month, the first of such payments to be made on the 28th January 1929. There was no provision for payment of interest after due date, and it is clear that if the chargor paid the principal sum as agreed, he would on the same date, viz. the 28th March, pay the interest then due.

If the assignor of the bill of sale had entered into a similar agreement, I should have felt bound to hold that, as in the case of the charge, there was no reason why the law should imply something which the parties could very well have expressed, i.e. that interest should continue to be paid if default were made in repaying the principal. There would be nothing contravening the requirements of Bills of Sale Enactment in so providing (see Encyclopaedia of Forms & Precedents, Vol. 10, page 550). But the express agreement for the payment of interest in the bill of sale in question is by no means similar to the agreement for payment of interest on the charge in the case cited. It will be seen that the bill of sale is dated the 6th April 1932, but the first payment of one month's interest is on the 1st May when less than a month's interest would be due. Further, the interest is payable on the first day of every month, but the principal is repayable on the 30th July 1932, and the interest for July would not be payable till the 1st August 1932. There is no provision that when the principal is repaid on the 30th July, the assignor shall also pay the interest then due. On the contrary, he is to pay interest by equal instalments of $47.

In the case of *Chagmal Das* v. *Brij Bhukan Lal*, I.L.R. 17 All. 511, 514, where the question to be decided was whether under a certain contract for the repayment of a sum of money in two years, interest was payable after the date fixed for repayment, the High Court pointed out that there was considerable danger attending the applying to one document the judicial construction which had been in a previous case, applied to another, unless the two documents were in exactly the same terms.

This bill of sale must be construed so as to give effect to the apparent intention of the parties, and I find it impossible to hold, without doing violence to the language employed, that it was intended that the principal sum should be paid off with the interest then due on the 30th July 1932, and I conclude, therefore, that it was contemplated that if the principal sum were not repaid on the 30th July, interest at the rate specified would continue to be payable.

I should mention that counsel did not call my attention to the essential difference between the provisions of the Bill of Sale and the agreement for charge in the Seremban case. The applicant did, however, argue that when the bill of sale was renewed under the provisions of section 15 of the Enactment, it was renewed *in toto*, that is to say, that a new date for repayment of the principal was implied. Without expressing an opinion on this point, I think that the fact that a bill of sale is renewable, and that the bill of sale was in fact renewed, strengthens the presumption that it was the common intention of the parties that interest at the rate agreed should continue to be paid *post diem*.

Even, however, if interest is payable, it is not quite clear how much is due, as various payments on account of interest have admittedly been made. In his original affidavit the applicant gave credit for $730 only, but the respondent has been able to produce receipts for $955 (which the applicant now admits), and says that further sums have also been paid.

There will, accordingly, have to be an enquiry before the Registrar as to the amount actually due in respect of the bill of sale on the 26th August 1936, and there will be an order for sale to recover the amount so found and the costs of this application. The costs of the enquiry will be in the discretion of the Registrar, and will be either added to, or deducted from, the amount which the applicant is entitled to recover for principal, interest and costs.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J., WHITLEY & AITKEN, JJ.

October 27, 1936.

CHIN AH YEE.....**Appellant**

v.

PUBLIC PROSECUTOR.....**Respondent**

AND

CHIN PAU.....**Appellant**

v.

PUBLIC PROSECUTOR.....**Respondent**

[PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 46 and 47 of 1936.]

The Excise Enactment (Cap. 133) section 54—Analyst—Evidence of alcoholic contents of liquor.

The appellants were convicted by the Magistrate, Ipoh, under section 67 of the Excise Enactment (Cap. 133) with possession and sale of dutiable liquor without a licence.

They appealed and both appeals were referred to the Court of Appeal under section 53 of the Courts Enactment (Cap. 2), the main ground of appeal being that the